

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GRYPHON MASTER FUND, L.P.)	
)	
VS.)	3-04-CV-1617-B
)	
CHINA CABLE AND)	
COMMUNICATION, INC.)	

CERTIFICATION OF FACTS AND RECOMMENDATION
PURSUANT TO 28 U.S.C. §636(e)

Pursuant to the District Court's order filed on February 22, 2006, referring Plaintiff's Motion for an Order to Show Cause Why an Order of Contempt Should Not Be Entered filed on the same date, on April 20, 2006, came on to be heard Plaintiff's motion.

Plaintiff appeared through its counsel of record, Stephen C. Rasch, and S. Cass Weiland appeared representing that he appeared in the capacity of an officer of the court.¹ Based upon the statements of Mr. Rasch and Mr. Weiland the magistrate judge finds that all reasonable efforts have been undertaken to inform and advise Defendant of the magistrate judge's order filed on March 2, 2006, ordering Defendant to appear on April 20, 2006, before the undersigned to show cause why it should not be held in civil contempt of court. Except as noted above, Defendant did not appear for the scheduled hearing.

In accordance with the provisions of 28 U.S.C. § 636(e)(6)(B)(iii) the magistrate judge

¹Mr. Weiland is a member of the Patton Boggs, LLP, law firm which represented Defendant China Cable and Communication, Inc. in this action through the date on which the agreed judgment was entered. On December 6, 2005, Bobby Hawkins, an attorney with the Patton Boggs law firm, appeared at the hearing on Plaintiff's Motion to Compel Responses to Post-Judgment Discovery and advised the undersigned that the Patton Boggs firm's representation of Defendant had terminated. At the suggestion of the undersigned the law firm filed a formal motion to withdraw. Defendant did not otherwise appear at the December 6th hearing. On January 12, 2006, the District Court denied the law firm's motion to withdraw, but without prejudice to its re-filing upon the entry of substitute counsel for Defendant. No substitute counsel has entered an appearance. However on April 18, 2006, the Patton Boggs law firm filed its supplemental motion to withdraw which is presently pending before the District Court.

certifies the following facts:

CERTIFIED FINDINGS OF FACT:

1. On January 11, 2006, the magistrate judge filed an order granting Plaintiff's previously filed Motion to Compel filed on October 21, 2005, and Plaintiff's Motion to Compel Responses to Post-Judgment Discovery filed on December 20, 2005. In pertinent part the order required Defendant to produce its Rule 30(b)(6) representative for deposition in Dallas not later than March 15, 2006, and to serve its answer to Plaintiff's Post-Judgment Interrogatories and to serve its response to Plaintiff's Rule 34 documents request within thirty (30) days of the date of the order (i.e. on or before February 10, 2006) and to produce documents called for in the Rule 34 request at a location in the United States, not later than twenty (20) days after its response to the Rule 34 request was served.

2. Defendant has wholly failed to comply with each requirement of the court's January 1, 2006, order.

3. Defendant has wholly failed to show any cause or justification for its failure to comply with the court's January 11, 2006, order.

4. Defendant failed to appear on April 20, 2006, as required by the court's order to show cause filed on March 2, 2006.

CONCLUSIONS OF LAW:

1. Defendant is guilty of civil contempt of court by reason of its failure to obey the court's order filed on January 11, 2006. See Rule 37(b)(2)(B).

RECOMMENDATION:

For the foregoing reasons it is recommended that the District Court order that Defendant appear on a date and time certain in the District Court to show cause why it should not be

adjudged in contempt by reason of the foregoing certified facts.

A copy of this report and recommendation shall be transmitted to Plaintiff's counsel and to the Patton Boggs law firm to the attention of S. Cass Weiland.

FILED this 20th day of April, 2006.

A handwritten signature in black ink, reading "Wm. F. Sanderson, Jr.", is written over a horizontal line.

WM. F. SANDERSON, JR.
UNITED STATES MAGISTRATE JUDGE